29.01.2021
Ct. No.9
S/L No.7 & 8
KS

S.A. 139 of 2009
With
IA No. CAN 4 of 2021
Sri Bhupendra Nath Purakait (since deceased) & Ors.
Vs.
Sri Rasamay Mondal & Ors.
+
S.A. 140 of 2009
With
IA No. CAN 4 of 2021
Sri Bhupendra Nath Purakait (since deceased) & Ors.
-Vs.-
Sri Rasamay Mondal & Ors.
(Via Video Conference)

Mr. Subhrajyoti Ghosh
.....For the Appellants

IA No. CAN 4 of 2021

Both the applications be heard simultaneously.

Affidavit of service filed in Court with the postal slip to show that the notice has been issued upon the respondents be kept on record.

This is an application for recall of the order dated 13.01.2021 wherein this Court dismissed the application being CAN 1 of 2006 (Old CAN No. 4292 of 2006), CAN 2 of 2019 (Old CAN No. 7150 of 2019) and CAN 3 of 2020 in S.A. 139 of 2009 and the applications being CAN 1 of 2006 (Old

CAN No. 4293 of 2006), CAN 2 of 2019 (Old CAN No. 7151 of 2019) and CAN 3 of 2021 in S.A. 140 of 2009 are dismissed for default.

Mr. Subhrajyoti Ghosh, learned advocate appearing for the appellants appears and submits that when the matter was called for the first time the clerk of learned advocate informed him that the matter was called once by the Hon'ble Court, but at that time learned advocate for the appellants was engaged in a matter before another bench and as soon as the matter was over immediately he rushed to the Court room and he found that the matter was dismissed for default.

It is submitted that there is no latches or negligence on the part of appellants and that the circumstance was beyond control for learned advocate to attend in the matter. I find that there is only one default and I am of the view that litigant should not suffer for any default on the part of conducting lawyer. So, considering the explanation offered in the application, the application for be recall of the order of dismissal for default is allowed.

Let the order of dismissal dated 13.01.2021 be recalled and the applications aforesaid be restored to its original file and number.

Thus, the application being, IA No. CAN 4 of 2021(SA No.139 of 2009) and IA No. CAN 4 of 2021 (SA 140 of 2009) are disposed of. There shall be no order as to cost.

(Shivakant Prasad, J.)